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99 CENTS ONLY STORES, LLC

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOAN O'CONNELL, individually,

CASE NO.:

Plaintiff,

vs.

DEFENDANT 99 CENTS ONLY
STORES, LLC'S NOTICE OF
REMOVAL OF ACTION TO
UNITED STATES DISTRICT
COURT UNDER 28 USC §1441(a)

99 CENTS ONLY STORES, LLC, a
 Foreign Limited-Liability Company; DOE
 EMPLOYEE, individually; DOE
 MANAGER, individually; DOES I-XX,
 inclusive; and ROE CORPORATIONS, I-
 XX, inclusive,

Defendants.

Defendant 99 CENTS ONLY STORES, LLC, by its undersigned attorneys LEW
 BRANDON, JR., ESQ., ANDREW GUZIK, ESQ., and SARA PASQUALE, ESQ., of
 BRANDON | SMERBER LAW FIRM, hereby removes the above-captioned case to the United
 States District Court, Clark County, Nevada, where the action is now pending, pursuant to 28
 USC § 1441(a) and states as follows:

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1. The above entitled action was commenced in the Eighth Judicial District Court, Clark County, State of Nevada on September 4, 2020, bearing Case No. A-20-820730-C. The action is now pending in the Eighth Judicial District Court, Clark County, State of Nevada.

2. Plaintiff JOAN O'CONNELL ("Plaintiff") filed her initial complaint on or about September 4, 2020, claiming damages in excess of fifteen thousand dollars (\$15,000.00). Plaintiff's Complaint fails to state that this case is one which is or has become removable. *See Harris v. Bankers Life & Cas. Co.*, 425 F.3d 689 (9th Cir. 2005).

3. Defendant 99 Cents Only Stores, LLC ("Defendant") filed its Answer to the Complaint on October 1, 2020.

4. On October 21, 2020, Plaintiff served her Petition for Exemption from Arbitration upon Defendant, wherein Plaintiff alleges that she sustained general damages of seventy-eight thousand one hundred sixty-three dollars and 23/100 (\$78,163.23), which does not include Plaintiff's alleged past or future pain and suffering.

5. Pursuant to Fed. R. Civ. P. 6(a), the last day of the thirty (30) day period is November 20, 2020. 28 USC §1446(b); *Harris*, 425 F.3d.

6. This Notice of Removal was filed timely as it was filed within thirty (30) days of service of the Petition for Exemption from Arbitration upon Defendant, which was the first motion, order, or other paper from which it could first be ascertained that this case is one which is or has become removable. *Id.*

7. This action concerns an allegation that the Defendant negligently maintained the premises such that a hazardous condition was on the floor, failed to warn Plaintiff of such condition, and/or negligently hired, trained, supervised, and retained individuals responsible for the maintenance of the premises, thereby causing Plaintiff injury.

8. In her Complaint, Plaintiff states she "is, and at all relevant times herein, was a resident of Clark County, State of Nevada." Based upon Plaintiff's allegations, Defendant is informed and believes that Plaintiff is and was a citizen of the State of Nevada.

9. Defendant is and was at the time this action was commenced, a limited liability company organized under the laws of the State of California.

10. A limited liability company is a citizen of every state in which its members are citizens. *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006).

11. Defendant's sole managing member, Number Holdings, Inc., is a corporation. *Id.*

12. Corporations are citizens of any State in which they are incorporated or have their principal place of business. *Id.*; 28 USC §1332(c)(1).

13. Number Holdings, Inc. is a corporation organized under the laws of Delaware with its principle place of business in California.

14. Since Defendant's sole managing member is organized under the laws of Delaware with its principle place of business in California, Defendant, for diversity purposes, is a citizen of both Delaware and California.

15. At the time of commencement of this action Defendant was a citizen of both Delaware and California, and Plaintiff was a resident of Nevada, such that complete diversity of citizenship exists between Plaintiff and Defendant. *See* 28 USC §1332.

16. Upon information and belief, Plaintiff's damages amount to seventy-eight thousand one hundred sixty-three dollars and 23/100 (\$78,163.23), plus her alleged past or future pain and suffering. As a result, the amount in controversy exceeds seventy-five thousand dollars (\$75,000.00).

17. The United States District Court for the District of Nevada has original jurisdiction pursuant to 28 USC §1332 in that the parties are citizens of different states and the amount in controversy exceeds the sum or value of seventy-five thousand dollars (\$75,000.00), exclusive of interests and costs.

18. Accordingly, Plaintiff's Complaint is removable pursuant to 28 USC §1441, which provides that a defendant may remove a case over which the federal court has original jurisdiction.

19. A complete copy of all process and pleadings served upon Defendant is attached hereto as **Exhibit 1**.

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1 Defendant 99 CENTS ONLY STORES, LLC, therefore, respectfully requests that this
2 action proceed in this Court as an action properly removed to it.

3 DATED this 23rd day of October, 2020.

4 **BRANDON | SMERBER LAW FIRM**

5 */s/ Lew Brandon, Jr., Esq.*

6 **LEW BRANDON, JR., ESQ.**

Nevada Bar No. 5880

7 **ANDREW GUZIK, ESQ.**

Nevada Bar No. 12758

8 **SARA PASQUALE, ESQ.**

Nevada Bar No. 14412

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CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I hereby certify that on October 23, 2020, I served a true and correct copy of the foregoing **DEFENDANT 99 CENTS ONLY STORES, LLC'S NOTICE OF REMOVAL OF ACTION TO UNITED STATES DISTRICT COURT UNDER 28 USC §1441(a)** through the Court's electronic filing and service systems to all parties on the current service list.

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/s/ Bonita Alexander

An Employee of BRANDON | SMERBER LAW FIRM